IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1389 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAURASHTRA INSECTICIDES AND FERTILIZERS A FIRM & 10 - Appellant(s)
Versus
GUJARAT AGRO INDUSTRIES CORPN - Defendant(s)

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Appearance :

MR MB GANDHI for Appellant(s) : 1 - 11.
MS PJ DAVAWALA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/08/2006

ORAL JUDGMENT

1. Present appeal has been filed by the appellants – original defendants (hereinafter referred to as “the defendants”) challenging the judgment

and decree passed by the learned City Civil Court, Ahmedabad, dated 31st December, 1984 passed in Civil Suit No. 1752 of 1979 in partly allowing the said suit directing the defendant Nos.1 to 7 and 11 to pay jointly and severally to the plaintiff Rs.16,180.06 ps as principal amount and future interest calculated at the rate of 6% p.a. from the date of institution of the suit till payment made for realization over the principal amount.

2. The plaintiff – Gujarat Agro Industries Corporation Ltd filed Civil Suit No.1752 of 1979 against the defendants to recover Rs.31,290.66 ps with future interest at the rate of 12% p.a. It was averred in the plaint that the plaintiff is a company duly incorporated under the Companies Act. They were purchasing, processing and selling various agricultural goods including pesticides. It was averred that the defendant No.1 – firm was its agent for selling its various items in Bhavnagar District and the defendant No.1 used to place orders either on

telephone or by writing to it and it used to supply the goods to the concerned parties as per the instructions of defendant No.1 – firm and accordingly, the defendant No.1- firm placed orders for the goods and it supplied the same on credit to the defendant No.4 – firm on 20th September, 1976 and on 16th October, 1976 and delivery chalans thereof were signed by the defendant Nos.5 and 6 on behalf of defendant No.4 – firm and the bills for the said goods were given to the defendant No.4 – firm and the aggregate amount due to it was Rs.44,747.66 ps inclusive of the Bank charges of Rs.17.50 ps. It was further averred that the defendant No.7 – firm stood as a guarantor or surety for the payment of the said bills and the defendant No.7 – firm gave three cheques of Rs.10,000/-, Rs. 10,000/- and Rs.6300/- on 26th January, 1978, 15th February, 1978 and 29th February, 1978 respectively to it against the payment of the aforesaid bills. But those cheques were returned unpaid and thereupon the defendant No.7 – firm was informed accordingly and thereafter it

received Rs.13,457/- against the above amount due to it and after deduction thereof, the amount of Rs.31,290.66 ps remained due to it for which, the suit was filed.

3. The suit was originally instituted as Summary Suit, however, an application was submitted for leave to defend and the leave to defend was granted unconditionally and the suit was transferred on the list of long causes. By purshis at Exh.40, it was submitted on behalf of the defendants that the leave to defend filed by them may be taken as their written statement.

4. The learned trial Court raised the issues at Exh.45. The plaintiff produced various documents with list at Exhs.3, 52, 96, 99, 124, 169, 171 and 193. On behalf of the plaintiff, its Manager, Finance of Pesticides Unit, one Shri Satishkumar Pushkarrai Desai was examined. On behalf of the defendants, only defendant No.2 – Natvarlal Prataprai Pandya was examined. On the defendants' side, they have produced various

documents with list at Exh.207. The defendant No.6 – Ramjibhai Mavjibhai Jasani was examined on behalf of himself and the defendant No.4 and they have also produced various documents with list at Exhs.18, 23, 75 and 140. Though the defendant No.5 did not examine himself, he has produced various documents with list at Exhs.73 and 211. After considering the oral as well as documentary evidence, the learned trial Court passed a decree for an amount of Rs.16,180.06 ps by holding that the suit is not barred by limitation and the plaintiff has proved that the goods worth Rs.44,747.66 ps were supplied to the defendant No.4. The learned trial Court also further held that the defendant No.1 – firm was an agent of the plaintiff – firm and accordingly, passed a decree for an amount of Rs.16,180.06 ps. Being aggrieved and dissatisfied with the judgment and decree passed by the learned City Civil Court, Ahmedabad, the defendants have preferred the present appeal.

5. Though the learned advocate appearing on behalf

of the defendants has tried to assail the judgment and decree passed by the learned trial Court, however, he is not in a position to satisfy this Court as to how the judgment and decree passed by the learned trial Court is bad in law and/or contrary to the evidence on record. He has taken this Court through the evidence on record, however, he is not in a position to assail the judgment and decree and satisfy this Court that the judgment and decree passed by the learned trial Court is contrary to the evidence on record. On going through the entire judgment and decree as well as the Records and Proceedings and the evidence, the learned trial Court is justified in passing decree for an amount of Rs.16,180.06 ps for the goods supplied by the plaintiff – firm through the defendant No.1. This Court is in complete agreement with the reasoning and findings of the learned trial Court and not to burden the judgment, this Court is not reproducing the evidence and considering the over all circumstances, this Court is in full agreement

with the judgment and decree passed by the learned trial Court.

6. For the reasons stated above, the appeal fails and is accordingly dismissed. No costs. Ad-interim relief, if any, stands vacated forthwith.

[M.R.SHAH, J.]

kdc.